

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CMG HOLDINGS GROUP, INC. as assignee of :
XA, THE EXPERIENTIAL AGENCY, INC., :

Civil Action No.: 15-cv-05814-JPO

Plaintiff, :

vs. :

JOSEPH WAGNER, HUDSON GRAY LLC, :
DARREN ANDERECK, JESSIE LOMMA, :
MICHAEL DAY, JEAN WILSON, ESTELLE :
PIZZO, STUDIO AG, LLC, REMIGIO GUDIN, :
and MIXED COMPANY, INC., :

**DECLARATION OF SCOTT R.
MATTHEWS IN OPPOSITION TO
PLAINTIFF’S AND THIRD-PARTY
DEFENDANTS’ MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Defendants. :
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JOSEPH WAGNER, JEFFREY SMITH, DARREN :
ANDERECK, and JESSIE LOMMA, :

Third-Party Plaintiffs, :

vs. :

GLENN LAKEN and ALEXIS LAKEN, :

Third-Party Defendants. :
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SCOTT R. MATTHEWS, pursuant to 28 U.S.C. § 1746, hereby declares under penalty
of perjury that:

1. I am a member of the Bar of this Court and a Partner of the law firm Windels Marx Lane & Mittendorf, LLP, attorneys for defendants Joseph Wagner (“Wagner”), HudsonGray, Inc. (“HudsonGray”), Darren Andereck (“Andereck”), Jessie Lomma, Michael Day, Jean Wilson (“Wilson”), Estelle Pizzo (“Pizzo”), Studio AG, LLC, Remigio Gudin, and Mixed Company, Inc. (collectively, the “Defendants”), and Third-Party Plaintiffs Wagner, Jeffrey Smith, Andereck, and Lomma (collectively, the “Third-Party Plaintiffs”). As such, I am fully familiar with the facts set forth below.

2. I submit this Declaration in opposition to Plaintiff's and Third-Party Defendants' motion for partial summary judgment.

Glenn Laken's Sale of CMG Stock

3. I have reviewed the EDGAR database on the website for the Securities and Exchange Commission, and I could find no record of a Form 4 filed by Glenn Laken concerning the May 10, 2018 trade of CMG stock he made via his wife, Barbara Laken's, account, or of trades he made on Sol Mlot's account.

Exhibits

4. A copy of Plaintiff's Re-Notice of Deposition of HudsonGray LLC Under Rule 30(b)(6), dated September 13, 2018, is annexed hereto and made a part hereof as **Exhibit "A."**

5. A copy of an account transaction history of a TD Ameritrade account held in Barbara Laken's name, dated July 16, 2018 and Bates-stamped XA732994-732996, is annexed hereto and made a part hereof as **Exhibit "B."**

6. A copy of the Affidavit of Sol Mlot, dated September 24, 2015, is annexed hereto and made a part hereof as **Exhibit "C."**

7. A copy of the Affidavit of Sol Mlot, dated March 2, 2017, is annexed hereto and made a part hereof as **Exhibit "D."**

8. A copy of an excerpt from the transcript of the deposition of Darren Andereck, dated September 14, 2018, is annexed hereto and made a part hereof as **Exhibit "E."**

9. A copy of an excerpt from the transcript of the deposition of Michael Day, dated September 13, 2018, is annexed hereto and made a part hereof as **Exhibit "F."**

10. A copy of an excerpt from the transcript of the deposition of Jessie Lomma, dated November 6, 2018, is annexed hereto and made a part hereof as **Exhibit "G."**

11. A copy of an email from Alexis Laken to Bsweeney@crains.com, dated December 16, 2014 and Bates-stamped XA617645-617646, is annexed hereto and made a part hereof as **Exhibit “H.”**

12. A copy of the Summons and Complaint, dated September 22, 2014, which commenced this action, is annexed hereto and made a part hereof as **Exhibit “I.”**

13. A copy of an Inmate Locator, printed from the United States Bureau of Prisons website, showing that Glenn Laken, Register Number 12999-424, was released from prison on March 3, 2008, is annexed hereto and made a part hereof as **Exhibit “J.”**

14. A copy of an excerpt from the transcript of the deposition of Joseph Wagner, dated September 20, 2018, is annexed hereto and made a part hereof as **Exhibit “K.”**

15. A copy of an excerpt from the transcript of the deposition of Jean Wilson, dated September 21, 2018, is annexed hereto and made a part hereof as **Exhibit “L.”**

16. A copy of CMGO Historical Prices, showing the prices for CMG stock for the period of April 2, 2018 until June 1, 2018, and printed from the website of www.investorshub.com, is annexed hereto and made a part hereof as **Exhibit “M.”**

17. A copy of a Transaction History for Barbara Laken’s E-Trade account showing trades on May 10, 2018 is annexed hereto and made a part hereof as **Exhibit “N.”**

18. A copy of an excerpt from the transcript for the deposition of Glenn Laken, dated November 11, 2018, is annexed hereto and made a part hereof as **Exhibit “O.”**

19. A copy of a statement for Barbara Laken’s E-Trade account for the period of March 1, 2018 to March 31, 2018, is annexed hereto and made a part hereof as **Exhibit “P.”**

Glenn Laken's Giantkiller Posts

20. Glenn Laken admittedly posted on a CMG stock message board at www.investorshub.com under the pseudonym "giantkiller". (Doc. No. 147, ¶ 10.) A sample of some of those posts is collectively annexed hereto and made a part hereof as **Exhibit "Q."** The posts are arranged in chronological order and are Bates stamped.

21. Many of the messages anonymously posted by Glenn Laken appear designed to increase the price of CMG stock or to convince people to buy or hold CMG shares:

- "Where's all the help today a little push here and were firmly in penny land can't do it all by myself!!! GO CMGO"¹ (Ex. Q, DEF165361);
- How can you not be blown away by these numbers, this is a company with a market cap of less than 3 million that has put up a quarter with a profit of almost the entire market cap. To focus on 100k of debt incurred at the beginning of the quarter is shortsighted and stupid. These are spectacular numbers for a penny stock. I want to be the first to congratulate management for a spectacular job!!!" (*Id.*, DEF165376);
- "I'm not knocking him, I'm only saying that good progress is being made on all fronts. This stock is absurdly cheap and I am buying almost everyday day, if you believe it is cheap than the answer is continue to buy until it isn't. IMHO !!!" (*Id.*, DEF165392);
- "If we should be .20/.50 you shouldn't be buying 30,000 shares you should be buying 3 million shares!!!" (*Id.*, DEF165413);
- The fact that this is trading at less than the cost of a fully reporting shell is a farce you hang in there you're going to be right!!!!!" (*Id.*, DEF165455);
- And, protesting too much: "This is not a BS pump it's a real company being built. The enterprise value IMO is way beyond here (in the multiple pennies) just a little patience and some more deals and it's pay day time." (*Id.*, DEF165463);
- "At anything less than .02 this is way too cheap!" (*Id.*, DEF165466)

¹ All spelling and grammatical errors in the message board posts quoted here are in the original.

22. Glenn Laken, posing as someone else, frequently posted messages to praise the job that he was doing as CEO: “What’s good for the Laken’s is good for the shareholders this dude has been working for free for going on 3 years, guys no shmuck if he didn’t think there was a real payday why would he be still at it!!!!” (*Id.*, DEF165482)

23. Some of the posts contained inside information that should not have been disclosed anonymously to the message board readers:

- “My bet 10q out before opening tomorrow and numbers will be eye popping!!!” (*Id.*, DEF165373);
- “Glenn asked me to impart a few things on his behalf, the audit is being worked on. There was a problem with the auditor not the company that is the delay. It will be done next week. The company is very tight cash and Glenn has made 2 significant loans to the company to fund necessary fundings. He is committed to getting the company back on its feet, and is working full time at no compensation to make this happen. He stated that he was working on a number of initiatives that could be favorable to the company and hoped to be able to share them soon. He also said he understood that the silence was deafening and asked for your indulgence for a short time longer.” (*Id.*, DEF165445)

24. Not only were Glenn Laken’s posts all anonymous – even after he became CEO and Chairman of CMG’s Board – he repeatedly lied to shareholders about his identity, all the while making favorable statements about the price of the stock and the “great” job that Glenn Laken, or management generally, was doing:

- “Guys I can tell you I just spoke to Glenn and he is very excited about what is going on at XA and what Burkhardt [XA’s then-Chairman] is doing, they are working on a number of deals and thinks this company is ready to explode!!” (*Id.*, DEF165395);
- “I know Glenn keeps an eye on this board and is very interested in what you guys think. He sometimes calls me to ask me to answer stuff he sees on here, I just try to pass it along!” (*Id.*, DEF165402);
- “Well said Pickle, Glenn has been a friend of mine for many years, we traded together on the floor of the CME and I’ve been with him in good times and bad. I know he feels passionately about this company and its shareholders. That was his

reason for taking the options and not the stock that was offered to him, 25 million shares, he wanted to get paid if everyone else did.” (*Id.*, DEF165408);

- “Leonard, Glenn is under no restrictions as to what he can buy or hold, I know this for certain as he has been a friend of mine for 30 years.” (*Id.*, DEF165436);
- “I spoke to Glenn and he is definitely looking around for financing and told me to deliver this message that any long holder of CMGO who is interested in providing financing for the company should get in touch with MW and provide him with a number and Glenn will contact you.” (*Id.*, DEF165443);
- “Never thought Laken was a knight in shining armor, seems to me he’s done as well as he could dealt the shit hand he was. But I will say sticking around and trying to fix it has gotten my attention. Benn in penny land a long time rarely plays that way! So we will see how it finishes I’m betting on Laken over Joe and I Bet better than I trade!!” (*Id.*, DEF165450)

25. Glenn Laken also posted about CMG’s financial prospects to be received from this lawsuit:

- “I can assure you from the only insider that really counts who is Laken that he isn’t selling a share. I know this because I speak to him regularly. He believes ultimately this stock trades way higher but patience will necessary. The lawsuit is very much in play, waiting for a ruling from the judge with a go ahead there the stock is seriously undervalued. XA holding it own covering expenses and the 57/58% of G[ood] G[aming], these prices make little sense, only time will tell but value looks on our side.” (*Id.*, DEF165480);
- “It is true that nobody works for free nor should any of us expect them too. But if there is a huge settlement or verdict my money says this guy is going to share with the shareholders who have hung in there with him. And with the price of this stock now if that happens I figure there is going to be a bunch of money to go around IMO. You put your money up u take your chances I like the odds.” (*Id.*, DEF165484);
- “Believe me Glenn has stepped up he and his wife have worked this magical lawsuit for 2 years and 1000s of hours, that how it works with these gigantic lawsuits. David Boise’s firm didn’t take this lawsuit on contingency because he didn’t think it has serious merit. If it proves out the current capitalization will be a joke, this one is a buy and hold at these levels and see what happens, risk reward looks extremely favorable here in one mans opinion.” (*Id.*, DEF165487);

- “Not a thing has changed this is a lawsuit play right now. If the lawsuit is successful there is nothing but upside, lawsuits don’t move quickly they take time and effort and this suit is getting all of that. So if you don’t have the patience to see it through might as well take your loss and move on, although it seems to me if you waited this long you might as well hang on and see how it plays out, risk reward clearly in your favor, imho!!!!” (*Id.*, DEF165490)

Executed on December 20, 2018.

/s Scott R. Matthews

Scott R. Matthews